330.

SUPREME COURT OF THE UNITED STATES.

No. 122.

ASHER M. NATHAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	2
Citation and service	2	3
Answer to petition	4	4
Judgment of district court	6	6
Appeal ordered	7	6
Agreement of counsel	7	6
Opinion and decree of supreme court	8	7
Petition for writ of error	9	7
Writ of error allowed	10	8
Bond	11	8
Certificates of clerk and judge	12	9
Writ of error	13	10
Citation and service	15	10
Assignment of errors	17	11

J. & G. S. Gideon, printers.

The following petitions, &c., filed in the Supreme Court, June 9th, 1845:

Petition filed 3rd February, 1845, in district court:

STATE OF LOUISIANA vs. A. M. NATHAN. } No. 23,771.

To the honorable district court of the first judicial district of the State of Louisiana, the petition of the State of Louisiana, by Isaac T. Preston, attorney general, respectfully shows:

That A. M. Nathan, residing in the city of New Orleans, is justly indebted unto petitioner in the sum of two hundred and fifty dollars, amount of State tax due by him for pursueing, or having lately pursued, within the year 1843, the business of a money and exchange broker; and by virtue of the 9th section of an act to increase the revenue of the State, approved March 26th, 1842, he is liable to pay the same, but refuses, although thereunto amicably requested.

Wherefore, petitioner prays the premises, and annexed account, making part hereof, being considered, that the said A. M. Nathan may be cited to appear and answer this petition, and, after due proceedings had, that he may be condemned to pay the said State two hundred and fifty dollars, as aforesaid, with interest and costs of suit. And further, that he may answer the annexed interrogatories under oath. And petitioner prays for all further relief the nature of the case may require.

And as in duty, &c.

(Signed) ISAAC T. PRESTON,
Attorney General of the State.

Interrogatories to defendant.

Were you a broker, as above stated, in 1843?

Did you or not receive brokerage or commissions?

State clearly the nature of the same; whether received in money transactions.

Copy of account.

License No. 506.

STATE OF LOUISIANA, *parish of Orleans:*

State tax for the year 1843. Received of A. M. Nathan, esq., the sum of two hundred and fifty dollars for the State tax, upon the profession which he exercises, as a money and exchange broker, for the year 1843, in conformity to law.

(Signed) J. LE BLANC,
Collector of the State tax for the first municipality.

Citation—issued 3d February, 1845.

THE STATE OF LOUISIANA }
vs.
A. M. NATHAN. }

State of Louisiana, first judicial district court:

Mr. A. M. NATHAN, New Orleans.

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the judicial district, in the city of New Orleans, in ten days after the service hereof.

Witness the honorable A. M. Buchanan, judge of the said court, the third day of February, in the year of our Lord 1845.

(Sig'd) W. T. WAGNER, *D'y cl'k.*

Sheriff's return.

Received 4th February, 1845, and on the same day served a copy of petition and citation on the defendant personally.

Ret'd 5th February, 1845.

W. T. LEWIS, *D'y Sh'ff.*

Petition—filed 3d February, 1845.

In district court. To the honorable district court of the first judicial district of the State of Louisiana, the petition of the State of Louisiana, by Isaac T. Preston, attorney general, respectfully shews:

That A. M. Nathan, residing in the city of New Orleans, is justly indebted unto petitioner in the sum of two hundred and fifty dollars, amount of State tax due by him for pursueing, or having lately pursued, within the year 1844, the business of a money and exchange broker; and by virtue of the ninth section of an act to increase the revenue of the State, approved March 26th, 1842, he is liable to pay the same, but refuses, although thereunto amicably requested.

Wherefore, petitioner pray the premises, and annexed account, making part hereof, being considered, that the said A. M. Nathan may be cited to appear and answer this petition, and after due proceedings had, that he may be condemned to pay to said State two hundred and fifty dollars, as aforesaid, with interest and costs of suit. And further, that he may answer the annexed interrogatories under oath. And petitioner prays for all further relief the nature of the case may require.

And as in duty bound, &c.

(Signed) ISAAC T. PRESTON,
Attorney General for the State.

Interrogatories to defendant.

Were you a broker as above stated, in 1844?

Did you or not receive brokerage or commissions?

State clearly the nature of the same, whether received in money transactions.

Account.—Licence No. 472.

STATE OF LOUISIANA, *parish of Orleans:*

State tax for the year 1844.

Received of A. M. Nathan, the sum of two hundred and fifty dollars, for the State tax, upon the profession which he exercises, as a money and exchange broker, for the year eighteen hundred and forty-four, in conformity to law.

$250. (Signed,) J. LE BLANC,
Collector of the State tax for the first municipality.

Citation—issued third February, 1845.

THE STATE OF LOUISIANA,
vs.
A. M. NATHAN.

STATE OF LOUISIANA, *First judicial district court:*

Mr. A. M. Nathan, New Orleans: You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the first judicial district court, in the city of New Orleans, in ten days after the service thereof.

Witness the honorable A. M. Buchanan, judge of the said court, the third day of February, in the year of our Lord 1845.

Sheriff's return.

Received 4th February, 1845, and on the same day served a copy of petition and citation on the defendant in person. Returned 5th February, 1845.

(Signed,) W. T. LEWIS, *Deputy sheriff.*

Answer filed 19th April, 1845.

STATE OF LOUISIANA,
vs.
A. M. NATHAN.

SAME,
vs.
SAME.
First judicial district court.

These two suits consolidated 19th April, 1845, being Nos. 23,771 and 23,722.

The defendant for answer denies generally all the allegations in the plaintiff's petition contained. And further answering, he says, that so much of such parts of "an act to increase the revenue of the State," under and by virtue of which this suit is brought to recover of this defendant the tax thereby imposed upon the business of a money and exchange broker, and especially the 9th section thereof, particularly re-

ferred to in the plaintiff's petition, so far as the said section and act impose a tax on that part of the business of a money and exchange broker which consists in buying and selling exchange, the same is contrary to and in violation of so much and such parts of the Constitution of the United States as give to Congress the exclusive power to *regulate commerce*, and prohibit to the States all interference with the power so granted, and forbid them to *impose, without consent of Congress, any duty on imposts or exports.*

And so far as the said section and act impose a tax on that part of the business of a money and exchange broker which consists in buying and selling money or foreign coin, or other currency, the same is contrary to and in violation of so much and such parts of the Constitution of the United States as gives to Congress the exclusive power "*to coin money, regulate the value thereof, and of foreign coin.*"

And so far as said section imposes a tax, not uniform in amount with other State taxes on occupations, respondent avers, that the same is contrary to so much of the treaties, laws, and Constitution of the United States, as reserve and guarantee to the inhabitants of Louisiana all the rights, advantages, and immunities of citizens of the United States, particularly that of uniform taxation; and to so much of said Constitution as reserved to the people of the several States all powers not delegated to the States respectively, or to the Union.

Wherefore he prays, that the plaintiff's demand be dismissed with costs, and for all other and general relief which his case may require.

(Signed,) RICHARD HENRY WILDE,
Defendant's attorney.
" A. K. JOSEPHS.
" H. H. STRAWBRIDGE.

A. M. Nathan, defendant, for answer to the interrogatories to him propounded in the above entitled suit, says:

I was a money and exchange broker in 1843 and 1844, I received a brokerage or commissions on money and bills of exchange sold by my agency.

I will state clearly the nature of the same. My business, like that of money and exchange brokers in general, consists exclusively in negotiating and effecting for others the purchase and sale of exchange on other States or foreign countries. During the thirty years that I have been a money and exchange broker, I believe, nay, I am certain, that I have never, as such, sold a single bill drawn from one point of Louisiana on another.

I make myself acquainted with the current market value of exchanges. The purchasers and the sellers both resort to me for information on the state of the market of exchanges, and make me their common agent in the purchase and sale of bills, which are purchased for the purpose of making remittances to foreign parts, and usually so remitted immediately. On and out of the price of each bill, I receive a per centage or

commission, varying from $\frac{1}{4}$ to $\frac{1}{8}$ of one per cent., which is commonly paid on settlement. It is the same in money transactions.

(Signed,) A. M. NATHAN.

Sworn to and subscribed before me, this 3d March, 1845.

(Signed,)

Judgment of the district court.

These consolidated cases having been submitted to the court, and the court considering the law and the evidence, it is adjudged and decreed that the State of Louisiana recover of the defendant, A. M. Nathan, the sum of five hundred dollars, and costs of suit.

Judgment rendered 7th June, 1845.

Signed by consent same day.

A. M. BUCHANAN, *Judge.*

Order of court, filed 22d December, 1845, in Supreme Court.

State of Louisiana, first judicial district court, Saturday, the 7th day of June, 1845. Present, the honorable A. M. Buchanan, judge.

STATE OF LOUISIANA vs. A. M. NATHAN. } 2 cases, Nos. 23,771 and 23,772.

On motion of A. K. Josephs, esquire, of counsel for defendant, and on suggesting to the court that, in the opinion of said defendant, there is error in the judgment herein rendered to his prejudice, it is ordered that an appeal be allowed to the Supreme Court, returnable on the Monday of the present month; the bond and security required by law being by consent of counsel dispensed with.

[L. S.] Extract from the minutes, December 20th, 1845.

W. P. BEDLOCK, *Dep. Clk.*

Agreement of counsel, filed, Supreme Court, Dec. 22d, 1845.

THE STATE OF LOUISIANA vs. ASHER M. NATHAN. } On appeal—Nos. 23,771 and 23,772.

1st judicial district court.

Whereas, the record in this case has been brought up in the original, and decided after argument on brief, and the defendant intends to remove the same, by writ of error, to the Supreme Court of the United States.

It is agreed that a copy of the motion of appeal, taken by consent on the 7th June last, before the court of the first instance, and which alone is wanting to complete the record, be brought up and filed in this court *nunc pro tunc;* and that if the cause be presented in the Supreme Court of the United States by writ of error, all informalities shall be waived, and the cause be there tried as if presented in the most formal and perfect manner.

But this agreement shall not be construed as allowing any further stay of execution against the defendant, which, if desired, must be

sought in the manner pointed out by law; nor as acknowledging the right of the parties to remove the cause, by writ of error, to the Supreme Court of the United States, as to the tax imposed by the State of Louisiana on brokers, not however questioning the form of the record.

(Signed,) ISAAC T. PRESTON,
Attorney General.

NEW ORLEANS, *December 22d*, 1845.

(Signed,) A. K. JOSEPH,
" Attorney for A. M. NATHAN,
" H. H. STRAWBRIDGE.

Supreme court of the State of Louisiana, Monday, December 15th, 1845.

The court met. Present, their honors F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon.

STATE OF LOUISIANA, appellee,
vs.
A. M. NATHAN, appellant.

Appeal from the first judicial district court.

In this cause, the court this day delivered their opinion in writing, in the words and figures following:

These are two consolidated cases in which the State has recovered a tax, imposed by the legislature in the year 1842, upon money and exchange brokers. The only question submitted to our consideration is the constitutionality of the tax. We have been favored with a very long and printed brief, in which the unconstitutionality is sought to be established, on the ground that the power of unequal and partial taxation was never delegated to the legislature, and that this tax is contrary to the provisions of the Constitution of the United States, it being a tax on commerce, which Congress alone has the power to regulate.

It does not appear to us that the district court erred. The general assembly of this State is vested with all the legislative powers, even including that of unequal and partial taxation, although the State constitution does not grant it in express terms. Its attributes differ in this respect from those of Congress, which are limited to those actually granted The tax under consideration is not more a tax on commerce than that on stores and warehouses, &c. It is ordered. adjudged, and decreed, that the judgment of the district court be affirmed with costs.

Petition for a writ of error.

THE STATE OF LOUISIANA,
vs.
A. M. NATHAN.

Supreme court, filed December 23rd, 1845.

To the honorable the supreme court of the State of Louisiana, the petition of Asher M. Nathan humbly shews:

That your petitioner is informed, and verily believes, that there is

error in the judgment of the said court, rendered on the fifteenth day of December, instant, affirming the judgment of the district court, of the first judicial district, rendered on the seventh day of June last past, in the case of the State of Louisiana against your petitioner, for the sum of five hundred dollars; and that there was drawn in question, in the said suit, the validity of a statute of the State of Louisiana, on the ground of its being repugnant to the Constitution of the United States; and the judgments of the said courts, respectively, were against the right, privilege, and exemption prayed by your petitioner, as in and by the pleadings, and record of the said case in this honorable court remaining, will fully and at large appear.

Wherefore your petitioner prays, that a writ of error from the judgment of this honorable court be allowed and granted, returnable to the Supreme Court of the United States, in terms of the judiciary act of the twenty-fourth day of September, one thousand seven hundred and eighty-nine, and more especially of the twenty-fifth section of the said act. And your petitioner here tenders his bond, with security, according to law.

(Signed) RICHARD HENRY WILDE.

Judge's order.

Be it so, on the petitioner giving bond, with Alexander Harris as security, as the law directs.

(Signed) F. X. MARTIN.

Order of court.

Tuesday, December 23rd, 1845, the court met; present, their honors F. X. Martin, A. Morphy, and E. Simon.

His honor Judge Bullard is absent by leave of court.

STATE OF LOUISIANA, app'ee,
vs. } 5891.
A. M. NATHAN, app't.

The defendant and appellant, by his counsel, R. H. Wilde, esquire, having petitioned for a writ of error to the Supreme Court of the United States, and given bond, with security, in the sum of one thousand dollars, the said writ of error is allowed accordingly, the citation being signed by the chief justice of this court on terms of the act.

Bond.

Know all men by these presents, that we, Asher M. Nathan, principal, and Alexander Harris, surety, are held and firmly bound unto the State of Louisiana, in the sum of ($1,000) dollars, for the payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated in the city of New Orleans, this twenty-first day of December, in the year of our Lord eighteen hundred and forty-five.

Whereas, the said Asher M. Nathan has sued out a writ of error to the Supreme Court of the United States, to reverse a judgment rendered by the supreme court of Louisiana, in the case of the State of Louisiana against the said Asher M. Nathan, which judgment was rendered by the said court on the fifteenth of December, instant, for the affirmance of a judgment in the district court of the first judicial district of said State, against the said Asher M. Nathan, at the instance of the said State, for the sum of five hundred dollars, in a certain suit, wherein was involved the construction of an article or articles of the Constitution of the United States.

Now, therefore, the condition of the foregoing obligation is such, that, if the above named Asher M. Nathan shall prosecute his said writ of error to effect, and shall answer all costs and damages, if he fail to make good his plea, then this obligation to be void, otherwise to remain in full force.

(Signed) A. M. NATHAN, [L. S.]
" ALEX'R HARRIS, [L. S.]
Surety.

In presence of—
(Signed) A. K. JOSEPHS.

UNITED STATES OF AMERICA,
Supreme court, eastern district, State of Louisiana:

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana, for the eastern district, do hereby certify, that the foregoing eleven pages contain a true copy of the transcript of the proceedings had in the district court of the first judicial district, in a certain suit, wherein the State of Louisiana was plaintiff, and A. M. Nathan was defendant, and also of the opinion delivered by this court, and of all the proceedings had in this supreme court on the appeal taken by said A. M. Nathan, which appeal is now on the files thereof, under number 5891.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 21st day of January, in the year of our Lord one thousand eight hundred and forty-six, and in the seventieth year of the independence of the United States of America.

[SEAL.]

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA,
Supreme court, eastern district, State of Louisiana:

I, F. X. Martin, senior judge of the supreme court of the State of Louisiana, do hereby certify, that Eugene Lasere is clerk of the supreme court for the eastern district; that the signature of Eugene Lasere to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this 21st day of January, 1846.

F. X. MARTIN.

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a certain suit in the said supreme court, before you, or some of you, between the State of Louisiana, plaintiff, and Asher M. Nathan, defendant, wherein a right, privilege, and exemption was claimed by said defendant, under an article or articles of the Constitution of the United States, from the operation of a certain act of the State of Louisiana, relied upon as the title of the plaintiff in the said suit, on the ground that the said act was repugnant to the said Constitution, and the judgment of the said supreme court, (being the highest court of said State in which a decision in the suit could be had,) was against the right, privilege, and exemption specially set up and claimed by said defendant, a manifest error hath happened to the great damage of the said Asher M Nathan, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may further cause to be done therein to correct that error, what of right, and according to the Constitution and laws of the said United States, and the practice, forms, and proceedings of the said court, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-five.

F. X. MARTIN.

The President of the United States of America to the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Asher M. Nathan is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered in the said last mentioned court, against the plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said United States, this twenty-third day of December, one thousand eight hundred and forty-five.

F. X. MARTIN.

34/.

Received on the 24th December, 1845, and on the same day served copies of citation in error on Alexander Mouton, governor, and Isaac T. Preston, attorney general of the State of Louisiana, both in person, at the city of New Orleans.

Ret'd 29th December, 1845.

W. O. WAGNER, *U. S. Marshal.*

Copy of citation lodged in my office for the defendant, in terms of the act, this 23d day of December, 1845.

EUGENE LASERE, *Clerk.*

In the Supreme Court of the United States.

ASHER M. NATHAN
vs.
THE STATE OF LOUISIANA. } In error.

December term, 1846.

Afterwards, to wit, on the 7th day of December, in this same term, before the honorable the judges of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Asher M. Nathan, by Richard Henry Wilde, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration, or petition aforesaid, and the matters therein contained, are not sufficient in law for the said State of Louisiana to have or maintain their aforesaid action thereof against the said Asher M. Nathan. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said State of Louisiana against the said Asher M. Nathan, whereas, by the law of the land the said judgment ought to have been given for the said Asher M. Nathan against the said State of Louisiana. And the said Asher M. Nathan prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things he hath lost by occasion of the said judgment, &c.

RICHARD HENRY WILDE,
Attorney for plaintiff in error.

Filed 16th March, 1846.